

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HUBERT DUPIGNY,

Plaintiff,

-against-

UNITED STATES OF AMERICA; GEOFFREY S.  
BERMAN; ELINOR TORLOW; MOLLIE  
BRACEWELL; JACOB GUTWILLING; AARON  
MYSLIWIEC; THEIR OFFICERS AND AGENTS,  
SERVANTS, EMPLOYEES, ATTORNEYS, AND  
ALL OTHERS (INCLUDING SUBSIDIARIES) IN  
ACTIVE CONCERT OF PARTICIPATION, IN  
THEIR OFFICIAL AND INDIVIDUAL CAPACITY,

Defendant.

20-CV-5346 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff is currently detained in the Metropolitan Detention Center in Brooklyn, New York. On July 9, 2020, he filed this *pro se* action alleging that Defendants violated his constitutional rights in connection with his criminal proceedings, *United States v. Dupigny*, No. 18-CR-0528-1 (JMF) (S.D.N.Y.) (sentencing adjourned to March 23, 2021).

By order dated July 27, 2020, the Court directed Plaintiff, within thirty days, to pay the \$400.00 in fees required to bring a civil action in this Court or, to proceed *in forma pauperis* (IFP), that is, without prepayment of fees, submit an IFP application and prisoner authorization.<sup>1</sup> The Court subsequently granted Plaintiff two extensions of time to comply with the July 27, 2020 order. (See ECF Nos. 4, 6.) On November 9, 2020, the Court received Plaintiff's letter restating his intention to pay the filing fees. (ECF No. 7.)

---

<sup>1</sup> Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

Effective December 1, 2020, the administrative fee to file a civil action increased from \$50.00 to \$52.00, bringing the total fees to file a new action to \$402.00. On December 7, 2020, the Court received from Plaintiff a money order for \$400.00 and a copy of a complaint. Because Plaintiff did not include this case number on the submission and included a complaint, the Clerk of Court opened the complaint as a new civil action, assigned it docket number 20-CV-10281 (AJN), and returned Plaintiff's \$400.00 money order to him as insufficient to file the new action. Judge Alison J. Nathan dismissed Plaintiff's complaint under docket number 20-CV-10281 as duplicative of this action. *Dupigny v. United States*, ECF 1:20-CV-10281, 4 (S.D.N.Y. Dec. 11, 2020).

By order dated December 14, 2020, the Court granted Plaintiff a final opportunity to either resubmit the \$400.00 in fees – the relevant fees at the time he filed the complaint in this action – or submit an IFP application and prisoner authorization.

On January 22, 2021, the Court received from Plaintiff a check for \$402.00 labeled with the docket number 20-CV-10281 (AJN). Because that action was dismissed as duplicative of this action and is now closed, the Court applied Plaintiff's payment to this action. The relevant fees at the time Plaintiff filed this action were \$400.00, and the Court therefore directs the Clerk of Court to return the overpayment \$2.00 to Plaintiff.

### **CONCLUSION**

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. No summons shall issue at this time.

The Clerk of Court is further directed to return to Plaintiff the \$2.00 overpayment, because the administrative fee at the time that this action was filed was \$50.00, and it had not yet increased to \$52.00.

SO ORDERED.

Dated: February 12, 2021  
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON  
Chief United States District Judge